

MARITAL STATUS PROTECTION IN WASHINGTON STATE

Where Did it Come From and What Does it Mean? ¹

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Discrimination in housing based on marital status is illegal in Washington. The Washington State Law Against Discrimination (WLAD), found in the Revised Code of Washington (RCW) 49.60.222, makes it illegal to refuse to engage in a real estate transaction or provide different terms, conditions or privileges to a tenant, or prospective tenant, because of the tenant's marital status.

Marital status was not always a protected class under Washington law. In 1973 the WLAD was amended to prohibit discrimination in real estate transactions on the basis of marital status and sex. These two new protected class categories joined the existing categories of race, creed, color and national origin that had been part of the original 1969 law. Since 1973, the State's fair housing law has been further amended to prohibit discrimination against people with disabilities and families with children.

After being added to the law, it was less than a year before marital status protection was being examined. Both the Washington State Human Rights Commission (HRC), the agency that enforces the WLAD, and the legislature further defined the law. In April 1974, the HRC issued Declaratory Ruling No. 9, which advised Evergreen State College that it was an unfair practice for Evergreen to permit occupancy of its student housing units by married couples, but not by unmarried couples of the opposite sex.² The legislature quickly responded to this ruling, and in 1975 exempted dormitories from the sex and marital status coverage of the law.³

A marital status case quickly came before the court in 1976 in the case of Loveland v. Leslie. In this case, Steve Leslie contacted the owners of an apartment in North Bend, WA and told Ruby Loveland that he was interested in the 2-bedroom apartment for himself and a male roommate. Ms. Loveland's response was that the apartment would only be rented to married couples. The King County Superior Court agreed with the HRC's determination that marital status discrimination had occurred, and the property owners appealed the finding to the Washington State Court of Appeals. In 1978 Appeals Court agreed that the owners' refusal to rent to two men amounted to marital status discrimination.⁴ The owners argued that the term "marital status" was unconstitutionally vague, but the Court disagreed, finding that the term is commonly understood to relate to the existence or absence of a marriage bond.

Marital status is currently defined as the legal status of being married, single, separated, divorced or widowed.⁵ However, there is a distinction between marital status and cohabitation. "Status" relates to an individual, not a couple. The issue of how the cohabitation of unmarried couples relates to marital status protection is complex and has been the subject of much discourse. In *McFadden v. Elma Country Club*, the Washington State Court of Appeals determined that marital status does not include, or protect, co-habitation.⁶ Unmarried, cohabitating couples are not protected under this law. Occasionally, HRC will receive a call from an unmarried couple being denied an available rental unit because of their co-habitation. A housing provider has stated to them that her/his religious or "moral beliefs" do not allow her/him to rent to unmarried

couples who are cohabitating.⁷ This housing provider is using an argument under the 1st Amendment of the U.S. Constitution, claiming her/his right to "free exercise of religion." The HRC will not accept this type of complaint for processing (because of the McFadden decision), even though the couple may argue that they are being discriminated against based on their marital status. However, using a different set of facts, if a property manager tells an unmarried couple that their application will not be processed because she prefers to rent to married couples, because married couples are more stable than unmarried couples, that complaint will be accepted for processing. The distinction between what may be marital status discrimination and issues of co-habitation may be murky!

Although marital status has been frequently discussed in the courts, there have not been a significant number of complaints filed with the HRC alleging discrimination on this basis. Since January 2000, there have been four complaints filed and closed, and one complaint is currently pending before the agency. Marital status discrimination was not found in any of these complaints. As an example, an unmarried woman with three foster children claimed that she was denied the opportunity to rent a single-family home in Auburn, WA, which she wanted to share with another foster mother and her three children. The HRC found that the Complainant had not properly applied for the house, and that her monthly income was uncertain. Furthermore, two months prior to Complainant's application the landlord had rented another property to a single female with two children. Therefore, marital status was not a factor in this case.

In summary, it appears from the small number of complaints being filed, and the fact that in these complaints marital status discrimination is not proven, that housing providers are aware of their responsibilities and are not denying applicants based on their marital status. The law in this area is still developing. If you have questions, please contact the HRC at 206-464-6500.

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² Washington State Human Rights Commission, Declaratory Ruling No. 9, April 18, 1974.

³ RCW 49.60.222(3), "Notwithstanding any other provision of this chapter, it shall not be an unfair practice or a denial of civil rights for any public or private educational institution to separate the sexes or give preference to or limit use of dormitories, residence halls, or other student housing to persons of one sex or to make distinctions on the basis of marital or families with children status."

⁴ Hugo Loveland, et al. v. Steve Leslie, et al., 21 Wn. App. 84; 583 P.2d 664 (1978)

⁵ RCW 49.60.040(7)

⁶ 26 Wn. App. 195; 613 P.2d 146 (1980). "We hold, therefore, that in the absence of any authoritative decision to the contrary, in view of the legislative history of the statute, in the absence of any strong public policy to the contrary, marital status discrimination as used in RCW 49.60.222 does not include discrimination against couples who choose to live together without being married."

⁷ This issue was discussed at length in a 1996 decision of the California Supreme Court, *Smith v. Fair Employment and Housing Commission*, 12 Cal.4th 1143; 913 P.2d 909; 51 Cal. Rptr.2d 700.